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STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
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September 8, 2009

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841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

Catherine P. Awakuni
Executive Director
Department of Commerce and Consumer Affairs
Division of Consumer Advocacy
P. O. Box 541
Honolulu, Hawaii 96809

Re: Docket No. 2009-0048, Molokai Public Utilities, Inc. ("MPU") – General Rate Case

Dear Parties:

Enclosed are copies of the sign-up sheet and written comments from the public hearing held on September 3, 2009, in Kaunakakai, Molokai.

In addition, enclosed is a copy of a correspondence dated September 2, 2009, file-stamped September 3, 2009, from Jeffrey Eng, Director of Water Supply, County of Maui.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Azama".

Michael Azama
Commission Counsel

MA:laa

Enclosures

c: Peter A. Nicolas, MPU, Inc. (w/enclosure)

PUBLIC HEARING SIGN-UP SHEET

DATE/TIME: Sept. 3, 2009 @ 6:00 PM

STAFF: CC, JC, LHK, MA, LK, BGK

CITY/ISLAND: Hoolehua, Molokai

Ct. Rptr: None (Cassette Tapes)

PLACE/ADDRESS: Mitchell Pauole Center Conference Rm., 90 Ainoa St., Kaunakakai

DKT.NO./APPLICANT: Dkt. No. 2009-0048, Molokai Public Utilities, Inc.

SUBJECT: Application for Approval of Rate Increases, Revised Rate Schedules and Revised Rules

(PLEASE PRINT)

	NAME	ORGANIZATION/ADDRESS
1.	Elaine Hammond written comments submitted	Molokai Public Utilities 119 Merchant St Suite 408 Honl 96813
2.	Catherine Anakuni written comments submitted	Division of Consumer Advocacy
3.	Charles Roy Roy	Rate payer 2875 Kaluakoi Rd Mauaaloa HI 96770
4.	Tim Brunnert Brunnert	Mauaaloa HI 96770 PO Box 71
5.	LIANA Brunnert Brunnert	Rate Payer 2946 Kaluakoi Rd. Mauaaloa HI 96770

	NAME	ORGANIZATION/ADDRESS
6.	Peter Johnson resident	
7.	Bill VOGT (Vote)	RATE-PAYER (RESIDENT)
8.	Jane Lovell - incorporated by reference her oral comments and written submissions submitted in the Declet 2009-0049 public hearing.	County of Maui
9.	LYNN VOGT	RESIDENT, RATE PAYER
10.	Bill MILKS	WEST MOLOKAI ASSOCIATION
11.	ROBERT MARUSICH written comments submitted Marusich	WEST MOLOKAI ASSN
12.	BILL BOHNACKER - gone; did not testify	WEST MOLOKAI RESORT CONDOS

	NAME	ORGANIZATION/ADDRESS
13.	DOUG HARMS	WEST END RATE PAYER
14.	Carol Harms	west end rate payer
15.	Steve Morgan	west end rate payer MPU
16.	Cheryl Sakamoto - submitted one-page written chart	West end resident MPU
17.	Donna Morgan Moigan	
18.	Ray Tellstedt Tellstedt	WIIIA.
19.	Carl Brito - gone; did not testify	Kualapuu Resident

	NAME	ORGANIZATION/ADDRESS
20.	DeGray Vanderbilt	mol. Res. Lit -
21.	Mike MANGANA	Rate payer
22.	Conrad Aquino	Council Agri.
23.	CORA Schnackenberg	
23A)	Cora's Schnackenberg mother then spoke	
24.	Walter Ritte Ritte	
25.	Wayde Lee Wayde	
26.	Kalapana Kelihoomalu Kelihoomalu	

27. Lianna Brunner / came ~~out~~ ^{up} again

28.) Conrad Aquino / came up again
 29.) De Gray Vanderbilt / came up again
 30.) Carla Hanchett

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**HAWAII PUBLIC UTILITIES COMMISSION ("Commission")
PUBLIC HEARING ON MOLOKAI PUBLIC UTILITIES, INC.'S
AMENDED RATE APPLICATION
Docket No. 2008-0048**

**Public Hearing Testimony of Elaine Hammond
Molokai Public Utilities, Inc.
September 3, 2009**

Good evening. My name is Elaine Hammond. I am the Treasurer of Molokai Public Utilities, Inc. ("Molokai Public Utilities" or the "Company"), which is a public utility authorized to provide water utility services in the Kaluakoi area on the west end of the island of Molokai since 1981. I am here tonight to speak on behalf of Molokai Public Utilities in connection with our amended rate increase application filed on June 29, 2009. I would like to thank the Commission for holding this public hearing and for everyone's attendance this evening.

As you may know, Molokai Public Utilities currently provides potable and non-potable water service to the Kaluakoi Resort, Ke Nani Kai and Paniolo Hale Condominiums, Kaluakoi Villas, Papohaku Ranchlands, Moana Makani subdivisions, and certain Maui County parks. The Company's current base rates were established in 2003, with a special temporary rate for water consumption established by the Commission in 2008 to provide the Company temporary rate relief. The increases in expenses, costs and investments since the 2003 base rates were established, has resulted in the Company operating at a significant loss for the last several years to the point that a rate increase is now required.

In looking back, rate increases probably should have been sought by the Company on a more regular basis so that this proposed increase would not need to be so great. However, rate increase cases can be very expensive and these costs are typically passed through to the customer. We regret, in these tough economic times, that we must now seek such an increase, but in an effort to minimize the "rate shock" that you may experience, the Company is proposing a two stage phase-in of the new rates and charges.

In this case, we are seeking a net revenue increase of \$886,259. This amounts to an approximate 201.50% increase over pro forma revenues at the rates established in 2003 and an approximate 74.6% increase from the pro forma revenues at the temporary rate currently in effect for customers. This rate increase, if approved by the Commission, will allow us to continue providing all customers and the Molokai community with the necessary water utility services and a system that is both safe and reliable.

In addition, to help keep rates in line with changing and fluctuating electricity costs, we are also requesting approval of an Automatic Power Cost Adjustment Clause for our water service, which permits adjustments for electric costs during the year, as well as a Purchased Fuel Adjustment Clause for the fuel charge component of our water pumping costs. If approved by the Commission, these adjustment clauses will allow us to increase or decrease our rates based on any corresponding increase or decrease in our cost of electricity, as well as any

increase or decrease in the fuel charge component of our water pumping costs. Like most water utilities, electricity costs comprise a significant portion of our operating expenses and we have little or no control over the level of these costs. Due to the volatility of electricity costs, we believe that the establishment of such a clause is in the public interest as it may assist in reducing the frequency of rate increase requests in the future.

Although we understand that no one looks forward to increases in the rates they are charged, our proposed increase is needed to allow us to continue to provide safe, reliable and quality water services to all of our customers. We ask that you *consider the need for us to recover our reasonable costs in running our operation* to allow us to continue to invest in what is needed to ensure our ability to continue to provide our customers with water services in a safe and reliable manner.

We understand that the Commission and the Consumer Advocate will closely analyze and review our request for the rate increase. We look forward to working with the Commission and Consumer Advocate, as well as our customers, in explaining and supporting our proposal and addressing any concerns. We are committed to serving our customers to the best of our abilities and ensuring fair rates and charges, and trust that the result of this regulatory process will be the development and implementation of both fair rates and a reasonable rate design for our customers.

We thank you all for your attendance at this public hearing tonight, and hope that any concerns you may have can be addressed through this regulatory process. In addition, for those of you who may not have had the opportunity to review our rate increase application, a copy of our application continues to be available for public inspection at Molokai Public Utilities' offices at 100 Maunaloa Highway in Maunaloa, Molokai between the hours of 8:00 a.m. and 4:30 p.m., Mondays through Fridays, excluding holidays. You may also contact me by email in Honolulu at ehammond@molokairanch.com. If time permits and I know the answer, I will try to respond to questions that are raised this evening.

We appreciate the opportunity to make this presentation and thank you all for your attendance tonight.

Elaine Hammond, on behalf of
Molokai Public Utilities

**PUBLIC HEARING
MOLOKAI PUBLIC UTILITIES, INC.
DOCKET NO. 2009-0048**

**Presentation of Catherine P. Awakuni, Executive Director
Division of Consumer Advocacy
Thursday, September 3, 2009, 5:00 P.M.
Mitchell Pauole Center Conference Room**

Good evening Chairman Caliboso, Commissioner Cole, and Commissioner Kondo. I am Catherine Awakuni, Executive Director of the Division of Consumer Advocacy ("Consumer Advocate"). The Consumer Advocate represents the interests of the consumers in public utility matters. I am here this evening to listen to the consumers' comments and concerns regarding Molokai Public Utilities, Inc.'s ("MPUI") request for approval to increase its rates and charges and/or revise certain other charges.

The Consumer Advocate's role is to represent the interests of all Hawaii consumers of public utility services by advocating for reliable utility services at reasonable customer costs. To do this, the Consumer Advocate is taking an independent look at MPUI's requests for Public Utilities Commission ("Commission") approval of its rate increase. We will confirm whether there is a need for the proposed rates and whether the rates proposed are necessary to ensure the provision of reliable service. After completing our review, we will file a statement of position with the Commission explaining our analysis and recommendations. At this time, the Consumer Advocate has not completed its analysis and is not able to state its position on the merits of MPUI's request this evening.

Since the Commission will ultimately decide whether to allow MPUI to proceed with its request, we encourage the public to express their opinions to the Commission regarding MPUI's proposal. Your input is important because only you can tell us what effect the company's proposal may have on you and the businesses you may represent.

As we move forward, please feel free to contact the Consumer Advocate's office at anytime to share your thoughts, concerns, and questions regarding this or any other utility matter.

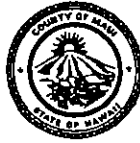
Thank you for the opportunity to make this presentation.

Contacts for the Division of Consumer Advocacy:
Mail Post Office Box 541, Honolulu, Hawaii 96809
E-mail consumeradvocate@dcca.hawaii.gov
Phone (808) 586-2800
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Bill Kauakea Medeiros
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Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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September 2, 2009

Carlito P. Caliboso, Chair
Public Utilities Commission
465 S. King Street #103
Honolulu, HI 96813

Dear Chair Caliboso:

SUBJECT: MOLOKAI PUBLIC UTILITIES AND WAIOLA O
MOLOKAI'S APPLICATION FOR WATER RATE INCREASE

I am writing in opposition of Molokai Ranch's water utilities application for a general rate increase. Last year, Molokai Ranch gave notice that they would be shutting down at the end of August, basically shirking their responsibilities to the community that they served. Although the PUC disallowed this action, the Ranch's utilities were granted a "temporary" 6-month rate increase that remains in effect to this day! The residents impacted with this exorbitant expense have already been hit by unemployment and inflation.

Now, Molokai Ranch through its utilities has filed a new application for a general rate increase that is up to five times of what residents were paying last May. In addition the utilities expect the residents to pay up to five times the fees for fire protection and meter reading and surcharges for escalating fuel costs. The residents can't even afford the temporary rates already imposed!

For the last year, the residents have had to literally pay the price for the failings of Molokai Ranch. Trying to break their backs and their resolve with an unfathomable rate increase is not the answer. The recent ruling by the First Circuit Court determining that Molokai Ranch and its public utilities are one in the same corporation means a greater source of capital to tap into. Sell off the assets to pay for the system. Don't unfairly put the back burden on the residents!

Respectfully,

A handwritten signature in black ink, reading "Danny A. Mateo". The signature is fluid and cursive, with the first name "Danny" and last name "Mateo" clearly visible.

DANNY A. MATEO
Council Chair

8

BRONSTER HOSHIBATA

A Law Corporation

Margery S. Bronster #4750

John T. Hoshibata #3141

Jeannette H. Castagnetti #7211

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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2009 AUG 10 AM 8:46

J. KUBO
CLERK

DEPARTMENT OF THE CORPORATION COUNSEL

County of Maui

Brian T. Moto #5421

Jane E. Lovell #7551

Edward S. Kushi, Jr. #2401

200 South High Street

Wailuku, Hawaii 96793

Telephone: (808) 270-7740

Facsimile: (808) 270-7152

Attorneys for Appellee County of Maui

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MOLOKAI PROPERTIES LIMITED
f/k/a MOLOKAI RANCH, LIMITED,

Appellant,

v.

DEPARTMENT OF HEALTH, STATE
OF HAWAII, COUNTY OF MAUI,
MOLOKAI PUBLIC UTILITIES, INC.,
WAI'OLA O MOLOKAI, INC., MOSCO,
INC.,

Appellees.

and

) Civ. No. 08-1-1877-08 EEH
) (Agency Appeal)
)

) ORDER AFFIRMING HEARINGS
) OFFICER'S FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) DECISION AND ORDER DATED
) AUGUST 14, 2008
)

) Oral Argument:

) Date: July 15, 2009
) Time: 11:30 a.m.
) Judge: Eden Elizabeth Hifo
)
)

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

COUNTY OF MAUI,

Appellee/Intervenor.

ORDER AFFIRMING HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER DATED AUGUST 14, 2008

After considering briefs and oral argument by the parties, the Court finds that there were no violations of due process or judicial practices in the administrative proceedings below. The Court further finds that there were no errors of law or clearly erroneous findings of fact by the hearings officer.

Accordingly, pursuant to Haw. Rev. Stat. § 91-14(g), the Court AFFIRMS the Findings of Fact, Conclusions of Law, Decision and Order dated August 14, 2008 entered in Department of Health Docket Nos. 08-SDW-E0-01 and 08-WW-E0-01.

AUG 06 2009

DATED: Honolulu, Hawaii,

EDEN ELIZABETH HIFO

EDEN ELIZABETH HIFO
JUDGE OF THE ABOVE ENTITLED COURT



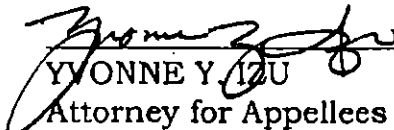
Approved as to Form:

Edward G. Bohlen

EDWARD G. BOHLEN
Deputy Attorney General
Attorney for Appellee Department of
Health State of Hawaii

James N. Duca

JAMES N. DUCA
MALIA SCHRECK
Attorneys for Appellant
Molokai Properties Limited f/k/a
Molokai Ranch, Limited


YVONNE Y. 12U
Attorney for Appellees
Molokai Public Utilities, Inc.,
Wai'ola O Molokai, Inc., and
Mosco, Inc.

ORDER AFFIRMING HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF
LAW, DECISION AND ORDER DATED AUGUST 14, 2008; Molokai Properties Ltd. v.
Department of Health, State of Hawaii, et al., Circuit Court of the First Circuit, State
of Hawaii, Civil No. 08-1-1877-08 EEH.

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,)	Docket No. 08-SDW-EO-01
STATE OF HAWAII)	
Complainant,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
vs.	)	DECISION, AND ORDER.
)	
MOLOKAI PUBLIC UTILITIES, INC.,)	
WAI'OLA O MOLOKAI, INC.,)	
MOLOKAI PROPERTIES LIMITED)	
f/k/a MOLOKAI RANCH, LIMITED,)	
)	
Respondents.)	

AND

DEPARTMENT OF HEALTH,	)	Docket No. 08-WW-EO-01
STATE OF HAWAII)	
Complainant,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
vs.	)	DECISION, AND ORDER.
)	
MOSCO, INC.,)	
MOLOKAI PROPERTIES LIMITED)	
f/k/a MOLOKAI RANCH, LIMITED,)	
)	
Respondents.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

These administrative contested cases came on for hearing on July 22, 2008 before Thomas P. Rack, Hearings Officer, with Respondent, Molokai Properties Limited, f/k/a Molokai Ranch, Limited, Molokai Public Utilities, Inc., Wai'ola O Molokai, Inc., and Mosco, Inc. being represented by Daniel Orodener, Esq., and the Department of Health, State of Hawaii, Safe Drinking Water Branch and Wastewater Branch being represented by Deputies Attorney General, Edward Bohlen and William Cooper. On request made by Mr. Orodener, the hearing in these matters was continued to July 30, 2008.

08-SDW-EO-01
08-WW-EO-01

EXHIBIT A

I hereby certify this document as
a complete, true and correct copy
of the original on file in this office.



On July 30, 2008, these contested cases again came on for hearing before Thomas P. Rack, Hearings Officer, with Respondent, Molokai Properties Limited, f/k/a Molokai Ranch, Limited ("MPL" or "Molokai Ranch") being represented by James Duca, Esq., Molokai Public Utilities, Inc. ("MPU"), Wai'ola O Molokai, Inc. ("Waiola"), and Mosco, Inc. ("Mosco") being represented by Yvonne Izu, Esq., the Department of Health ("Complainant" or "DOH"), State of Hawaii, Safe Drinking Water Branch ("SDW branch") and Wastewater Branch ("WW branch") being represented by Deputies Attorney General, Edward Bohlen and William Cooper, and Intervenor, County of Maui ("COM"), being represented by Deputies Corporation Counsel Jane Lovell and Edward Kushi, Jr..

Based upon the testimony and evidence presented, and the record and pleadings in this case, the Hearings Officer, having been delegated final decision-making authority by the Director of Health ("Director"), makes the following Findings of Fact and Conclusions of Law, Decision, and Order:

FINDINGS OF FACT

1. Molokai Public Utilities, Inc. ("MPU") is a Hawaii corporation whose business address is 745 Fort Street, Suite 600, Honolulu, HI 96813.
2. MPU is a privately owned public utility authorized to provide water service in the Kaluakoi area on the West end of the island of Molokai, State of Hawaii. MPU provides drinking and irrigation water to the Kaluakoi Resort, Ke Nani Kai and Paniolo Hale Condominiums, Kaluakoi Villas, Papohaku Ranchlands, Moana Makani subdivisions and Maui County parks.

3. MPU was granted a certificate of public convenience and necessity ("CPCN") by the Public Utilities Commission ("PUC") on October 29, 1981.
4. MPU is a wholly owned subsidiary of Kaluakoi Water, LLC. Kaluakoi Water, LLC is a wholly owned subsidiary of Kaluakoi Land, LLC. Kaluakoi Land, LLC is a wholly owned subsidiary of MPL.
5. There is no record as to when MPU last held a board of director's meeting.
6. Wai'ola O Molokai ("Waiola") is a Hawaii corporation whose business address is 745 Fort Street, Suite 600, Honolulu, HI 96813.
7. Waiola is a privately owned public utility authorized to provide water service to businesses, residences, churches, and Maui County parks located in the Maunaloa, Kualapuu, Kipu, Manawainui, and Molokai Industrial Park areas of the island of Molokai, State of Hawaii.
8. Waiola was granted a CPCN by the PUC on October 29, 1993.
9. Waiola is a wholly owned subsidiary of MPL.
10. There is no record as to when Waiola last held a board of director's meeting.
11. The water distribution and treatment systems at MPU and Waiola utilize both surface and underground sources of water.
12. Surface water sources for drinking water undergo treatment as such waters can contain contaminants and microorganisms. Surface water treatment is a two step process of filtration and disinfection.
13. The microorganisms and pathogens in surface and sub-surface water, if left untreated, can cause gastrointestinal illness and disease in humans, and even death.

14. Mosco, Inc. ("Mosco") is a Hawaii corporation whose business address is 745 Fort Street, Suite 600, Honolulu, HI 96813.
15. Mosco is a privately owned public utility authorized to provide wastewater service in the Kaluakoi area on the West end of the island of Molokai, State of Hawaii. Mosco provides wastewater collection and treatment services to the Kaluakoi Resort, Ke Nani Kai and Paniolo Hale Condominiums, Kaluakoi Villas, Papohaku Ranchlands, Moana Makani subdivisions.
16. Untreated or improperly treated domestic (human) sewage (a/k/a wastewater) contain microbes and pathogens which are harmful to humans and can cause illness and even death. Those who are exposed to untreated or improperly treated sewage can become ill may pass these illnesses to others.
17. Mosco is a wholly owned subsidiary of Kaluakoi Sewers, LLC. Kaluakoi Sewers, LLC is a wholly owned subsidiary of Kaluakoi Water, LLC. Kaluakoi Water, LLC is a wholly owned subsidiary of Kaluakoi Land, LLC. Kaluakoi Land, LLC is a wholly owned subsidiary of MPL.
18. Kaluakoi Sewers, LLC, Kaluakoi Water, LLC, and Kaluakoi Land, LLC are holding companies and have no employees.
19. Mosco was granted a CPCN by the PUC on October 29, 1982.
20. There is no record as to when Mosco last held a board of director's meeting.
21. Molokai Properties Limited ("MPL") is a Hawaii corporation whose business address is 745 Fort Street, Suite 600, Honolulu, HI 96813.

22. On November 1, 2002, Molokai Ranch, Limited filed a request with the Hawaii Department of Commerce and Consumer Affairs to change the corporate name of Molokai Ranch, Limited to Molokai Properties Limited.
23. Peter Nicholas is the sole officer and/or director of MPU, Waiola and Mosco, as of July 1, 2008.
24. Peter Nicholas is the sole officer and/or director of MPL.
25. MPL, Waiola, MPU, and Mosco all share the same office space.
26. By letter dated May 2, 2006, DOH issued a General Permit for Treatment Works for the Maunaloa Wastewater Treatment facility to MPL, as the named permittee.
27. By letter dated May 2, 2006, DOH issued a General Permit for Treatment Works for the Kualapuu Wastewater Treatment facility to MPL, as the named permittee.
28. In or around the latter part of March 2008, MPL advised the PUC, the COM, the Governor of Hawaii and others that MPL would no longer be able to monetarily subsidize the water utilities, Waiola, and MPU, and services from these utilities would terminate at the end of August 2008. MPL also advised that Mosco would likely cease operations when Waiola and MPU stopped providing services.
29. From the period of June 30, 2006 to May 31, 2008, Waiola had an operating loss of \$294,178.00. This loss was covered with funds from MPL.
30. In Docket No. 7122 before the PUC, the PUC found that Molokai Ranch sought a CPCN through Waiola as Molokai Ranch made improvements to the Maunaloa treatment and distribution system and believed that by becoming a public utility

through Waiola, Molokai Ranch might recover the improvement costs and future costs.

31. From the period of June 30, 2006 to May 31, 2008, MPU had an operating loss of \$1,064,872.00. This loss was covered with funds from MPL.
32. From the period of June 30, 2006 to May 31, 2008, Mosco had an operating gain of \$186,403. However, Mosco believes it cannot continue to operate at a profit if Waiola and MPU cease operations. Furthermore, Mosco advised that it will only continue to operate provide it suffers no losses.
33. Waiola, MPU and Mosco share three employees who work at each of the entities' facilities. These same employees also perform work for the water and sewer operations of MPL.
34. Since at least 2001, if not several years earlier, both MPU and Waiola have been operating at losses and have been subsidized by funds from MPL.
35. MPL provides administrative services through MPL employees for MPU, Waiola, Mosco and MPL's water companies, and these administrative costs are allocated to each utility.
36. The financial controller of MPL has authority to transfer funds directly from MPL's bank account(s) to MPU and Waiola via the bank's website.
37. MPL owns water system assets such as reservoirs, pipes, water tanks and piping running on and/or through land owned by MPL.
38. MPU, Waiola and Mosco have not sought PUC rate increases for the last several years.

39. On or about June 2008, the PUC issued an "Order Instituting a Proceeding to Provide Temporary Rate Relief to Molokai Public Utilities, Inc., Wai'ola O Molokai, Inc., and Mosco, Inc., Docket No. 2008-0115".
40. MPU, Waiola and Mosco did not request the rate relief proceedings mentioned in Findings of Fact No. 39.
41. On or about July 14, 2008, MPL filed a "Motion to Modify Order of June 23, 2008 Directing Molokai Properties, LTD. To Participate in Docket No. 2008-0115". In said Motion, MPL stated that if rate relief is granted to MPU and Waiola, no adjustment to the rates being charged by Mosco would be necessary.
42. The financial figures the PUC are using to calculate the proposed temporary rate relief for MPU and Waiola are based on calendar year 2007 income and expenses. MPL's financial controller noted that MPU and Waiola's fiscal year 2008 financial records show significantly larger expenses than the calendar year 2007 figures.
43. Mosco, Waiola and MPU represented they will continue to operate and provide drinking and wastewater services provided they suffer no losses.
44. Waiola issues payroll checks for the employees of Waiola, MPU and Mosco.
45. Without a sustained and reliable source of water, existing wastewater services and fire hydrants cannot be maintained.
46. The lack of a sustained and reliable source of safe drinking water in West Molokai will create a substantial danger to the public health and safety in that community.

47. Some 1,200 units are currently being served by MPU, Waiola, Mosco, and/or MPL. These units do not reflect the number of people who will be impacted if the utilities cease operations.
48. Failure to properly operate and maintain wastewater systems may lead to raw or untreated sewage spills.
49. The lack of wastewater transmission and treatment facilities in West Molokai will create a substantial danger to the public health and safety in that community.
50. The cessation of drinking water and wastewater services by MPU, Waiola, Mosco, and/or MPL is an imminent peril to the public health and safety.
51. On July 21, 2008, the Director served an Order on MPU, Waiola and MPL in Docket No. 08-SDW-EO-01 requiring MPU, Waiola, and MPL, for the next ninety (90) days to:
 1. Continue to operate the Maunaloa-Kaluakoi, Kualapuu and Kipu public water systems (water systems) and comply with all provisions of HRS Chapters 340E and Chapters 11-19, 11-20 and 11-25, HAR.
 2. Continue to operate the surface water treatment plant for the Maunaloa-Kaluakoi public water system at Puu Nana and meet all provisions of the Surface Water Treatment Rule, §11-20-46, HAR.
 3. Continue to operate the public water systems with certified Distribution System Operators and certified Water Treatment Plant Operators and comply with all provisions of HRS Chapter 340F and Chapter 11-25, HAR.
 4. Submit a written report to the DOH every seven days on the status of its operations of the public water systems at issue.
52. On July 21, 2008, the Director served an Order on Mosco and MPL in Docket No. 08-WW-EO-01 requiring Mosco and MPL, for the next ninety (90) days to:
 1. Continue to operate the Kaluakoi, Maunaloa, and Kualapuu wastewater systems and comply with all provisions of HRS Chapter 342D and Chapter 11-62, HAR.

2. Continue to operate the wastewater systems with certified wastewater treatment plant operators and comply with all provisions of HRS Chapter 340B and Chapter 11-61, HAR.
3. Submit a written report to the DOH every seven days on the status of its operations of the wastewater systems at issue.

CONCLUSIONS OF LAW

1. To the extent that any of the foregoing Findings of Fact are deemed to be Conclusions of Law, they are incorporated herein as Conclusions of Law. Should any of the Conclusions of Law be deemed Findings of Fact, the same are incorporated into the Findings of Fact.

2. County of Maui is a proper party to intervene in these proceedings.

3. Hawaii Revised Statutes ("HRS") §340E-4, provides, in pertinent part:

The director, upon learning that a contaminant is present in or is likely to enter a public water system or an underground source of drinking water and may present an imminent and substantial danger to the public, may take such actions necessary to protect the health of the public. The actions which the director may take include but are not limited to:

(1) Issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including the provision of alternative water supplies by persons who caused or contributed to the endangerment.

4. HRS §340E-5, provides, in pertinent part:

The director shall promulgate a plan for the provision of safe drinking water under emergency circumstances. When the director determines that emergency circumstances exist in the State with respect to a need for safe drinking water, the director may take such actions as necessary to provide water where it otherwise would not be available.

5. HRS §340E-7 (a), (c), (e) and (f), provide, in pertinent part:

(a) No supplier of water shall violate any rule adopted pursuant to section 340E-2.

- (c) No supplier of water shall violate any requirement of an emergency plan promulgated pursuant to section 340E-5.
- (e) No person shall violate any order issued by the director pursuant to this part.
- (f) No person shall cause a public water system to violate the state primary drinking water regulations.
6. The threatened cessation of drinking water provision and treatment by MPU, Waiola, and/or MPL will likely lead to the presence of contaminants in a public water system and presents an imminent and substantial danger to the public.
7. HRS §§340E-4 and 340E-5 do not require that DOH first find a violation before ordering actions to protect public health where a contaminant is likely to enter a public water system and may present an imminent and substantial danger to the public.
8. HRS §342D-4, provides, in pertinent part:
- ... the director shall prevent, control and abate water pollution in the State and may control all management practices for domestic sewage, sewage sludge, and recycled water, whether or not such practices cause water pollution.
9. HRS §342D-10, provides, in pertinent part:
- (a) Notwithstanding any other law to the contrary, if the governor or the director determines that an imminent peril to the public health and safety is or will be caused by the discharge of waste, any combination of discharges of waste, or any management practice that requires immediate action, the governor or the director, without a public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop the discharge or to reduce, stop or change the management practice, and may take any and all other actions as may be necessary. The order shall fix a time and place, not later than twenty-four hours thereafter, for a hearing to be held before the director. Management practices covered in this subsection are those

for domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution.

10. The threatened cessation of wastewater system treatment and maintenance in West Molokai by Mosco and/or MPL will likely lead to the discharge of untreated waste and presents an imminent and substantial peril to the public health and safety.
11. Given the imminent and substantial danger to public health, the Director has the legal authority under statutes and rules to order MPU, Waiola, Mosco, and MPL to act, over the next ninety days, to avoid a potential emergency and to protect the public health.
12. It is extremely likely the PUC's proposed temporary rate relief will be insufficient to cover current operating expenses for MPU, Waiola, Mosco and/or MPL and thereby will result in losses to the companies.
13. It is extremely likely that MPU, Waiola, Mosco, and/or MPL will incur losses, notwithstanding a temporary rate increase granted by the PUC, and will cease drinking water and wastewater services on or about September 1, 2008. Such a cessation of drinking water and wastewater services will cause an imminent and substantial danger to the public health and safety.
14. Kaluakoi Sewers, LLC, Kaluakoi Water, LLC, and Kaluakoi Land, LLC are mere holding companies of the assets of MPU and Mosco.
15. MPU, Waiola, Mosco and MPL have not observed corporate formalities and share the same single officer/director. This individual is also the sole officer and/or director of MPL.

16. MPL is the *alter ego* of MPU, Waiola and Mosco and therefore subject to the Orders of the Director of Health.

DECISION

It is undisputed the planned cessation of drinking water and wastewater services by MPU, Waiola, Mosco and MPL will cause a substantial public health crisis in West Molokai.

The Director of Health has various emergency powers as reflected in the statutes and administrative rules to prevent imminent and substantial danger to the public health and safety. While it is arguable that the cessation of drinking water and wastewater services is not "imminent" under that term's definition; it does appear clear to this Tribunal that MPU, Waiola, Mosco, and/or MPL will cease utility operations as stated. Although the utilities claim continued operations, this assertion is also predicated on incurring no operational losses. However, loss is almost certain to occur as the PUC's proposed rate relief is based on income and expenses which are not current. MPL, on behalf of the utilities has already indicated the 2008 operating expenses are higher than the 2007 numbers being contemplated by the PUC. Therefore, the planned shut-down of the utilities is impending and the public health danger is imminent.

MPU, Waiola, and Mosco all have Certificates of Public Convenience and Necessity granted by the Public Utilities Commission. Under these grants, the utilities are, in essence, given a monopoly to operate in specific geographic regions and charge rates approved by the Commission. In determining whether a utility should be granted a CPCN, the PUC requires the applicant to furnish a statement of financial ability to render the proposed service as well as the applicant's financial statement. HRS §269-7.5. As reflected in PUC Docket No. 7122, Molokai

Ranch Limited¹ placed its financial backing behind Waiola in order to obtain the CPCN.

Therefore, at least as far back as 1993, Molokai Ranch knew that the utilities would not be self sustaining and could only operate with funds being provided by the parent company. The evidence in this matter also confirms the inability of these utilities to operate independently.

Hence, the need for cash subsidies by MPL. Arguably, the PUC would not have granted CPCNs if it believed the backer of these utilities could abandon its financial support and allow the utilities to cease operation.

MPL argued that it is not the owner or operator of the utilities in question and therefore the DOH has no jurisdiction over this corporate entity. However, the alter ego doctrine has been adopted by the courts in cases where the corporate entity has been used as a subterfuge and to observe such corporate identities would work an injustice. *Robert's Hawaii School Bus, Inc. v. Laupahoehoe Transp. Co., Inc.*, 91 Hawai'i 224, 241, 982 P.2d 853, 870 (1999). Various factors are examined to determine if the corporate entity is the alter ego of another. As the Court noted in *Robert's Hawaii School Bus*, citing *Associated Vendors, Inc. v. Oakland Meat Co., Inc.*, 210 Cal.App.2d 825, 26 Cal.Rptr. 806, 813 (1962), commingling of funds and assets; failure to segregate funds of separate entities; identical equitable ownership in the entities; domination and control of one entity by another; same officers and directors responsible for the management and control of the entities; use of the same office space; employment of the same employees; the failure to adequately capitalize an entity; the use of a corporate entity as a mere shell, instrumentality or conduit for a single venture or the business of another corporation; disregard of legal formalities and the failure to maintain arm's length relationships among related entities;

¹ The corporate name of Molokai Ranch, Limited was changed to Molokai Properties Limited in 2002.

and the use of the corporate entity to procure labor, services or goods for another entity are factors to be weighed in applying the alter ego doctrine. In addition, such other factors can be examined, such as, incorporation for the purpose of circumventing public policy; whether the parent finances the subsidiary; whether the subsidiary has no business or assets except those conveyed to it by the parent; whether the parent uses the subsidiary's property as its own; and whether the directors of the subsidiary do not act independently in the interest of the corporation but take their orders from and serve the parent. *Robert's Hawaii School Bus, Inc. v.*

Laupahoehoe Transp. Co., Inc., 91 Hawai'i at 242, 982 P.2d at 871, citing, *Kavanaugh v. Ford Motor Co.*, 353 F.2d 710, 717 (7th Cir. 1965).

In the instant matter, numerous of the aforementioned factors are present to the extent that MPL is the alter ego of MPU, Waiola and Mosco, notwithstanding the intermediate holding companies. For many years, MPL provided financial subsidies to the utilities to cover their operating losses. In fact, MPL's financial controller has authority to transfer funds from MPL's account(s) to the utilities whenever necessary. Employees for the three utilities are shared and also perform work for the parent company, MPL. All of the companies share the same office space and MPL's administrative employees perform services for the utilities. MPL, Mosco, Waiola, and MPU also share the same single officer and/or director. MPL's attorney filed pleadings in PUC Docket No. 2008-0115 wherein he represented that no rate adjustment would be necessary for Mosco. MPL represented itself as the applicant for wastewater treatment facility permits for the Maunaloa and Kualapuu wastewater treatment plants. In fact, the permits were issued to MPL, as the permittee. Mosco, Waiola and MPU have not held board of directors meetings in recent times and this suggests a lack of observing corporate formalities. MPL's

General Manager requested a continuance of these proceedings on behalf of MPL, Waiola, MPU and Mosco. All of these factors demonstrate the MPL controls MPU, Waiola, and Mosco and is the alter ego of these entities.

The announced shutdown of water treatment and delivery systems by Waiola and MPU will likely lead to the presence of contaminants in the water systems and the Director has the authority to abate and prevent such occurrences. Likewise, the shutdown of the wastewater collection and treatment systems operated by Mosco will likely cause raw and untreated sewage to be discharged creating a public health nuisance. Again, the Director has the power to prevent such occurrences.

Under the Director's emergency powers, the Orders, in both dockets, to continue to operate the drinking water and wastewater systems are justified, reasonable and necessary. These Orders are also applicable to MPL.

ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, and Decision, it is hereby ORDERED:

1. The Director of Health's July 21, 2008 Order in Docket No. 08-SDW-EO-01 is hereby AFFIRMED.
2. The Director of Health's July 21, 2008 Order in Docket No. 08-WW-EO-01 is hereby AFFIRMED.

DATED: Honolulu, Hawaii, August 14, 2008.

A handwritten signature in black ink, appearing to read 'T. Rack', is written over a horizontal line.

THOMAS P. RACK
Hearings Officer

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)	DOCKET NO. 2009-0048
)	
of)	
	)	PUBLIC HEARING STATEMENT
MOLOKAI PUBLIC UTILITIES, INC.)	
	)	Thursday, September 3, 2009
For review and approval of rate increases;	)	5:00PM
revised rate schedules; and revised rules.)	
_____)	

WEST MOLOKAI ASSOCIATION'S PUBLIC HEARING STATEMENT

My name is William W. Milks. I am a attorney, speaking on behalf of West Molokai Association. Thank you for this opportunity to be heard.

This is West Molokai Association's first opportunity to be heard since its "Motion to Intervene" was filed in HPUC Docket 2008-0115. That motion was denied by the Commission. Now -- one year later -- the Association feels it must be heard...not only at this public hearing, but in the contested phase of this proceeding. WMA will request full party status. The Association urges the Commission's affirmative action on its "Motion to Intervene."

The Association wishes to work in concert with all interested private and public entities, in search for reliable water service at reasonable costs. The Association has concluded that only

this Commission can take charge -- as it did last year -- and lead the involved parties to a workable solution.

This Commission, today, has a new tool available to bring to the task at hand -- authorization to appoint a receiver. Act 74 was enacted five months ago for the explicit purpose of dealing with the MPU situation of one year ago. Last year, MPU said, in effect, "We quit...unless we get rate relief." At that time, MPU did not have the gumption to ask for rate relief. Since last Summer, we now find out, MPU has learned to ask for rate relief. And we all know that more rate increases are coming.

This rate Application raises the basic issue for the Commission to answer is: "Is MPU a failed utility, or in imminent danger of failing?"

The Commission has to decide if MPL's promise "of financial support, as needed" is a sufficiently reassuring statement to offset the serious threats to health, safety and welfare caused by MPU's failure to provide reasonable service at reasonable costs to consumers. West Molokai Association contends that MPU has failed.

- MPU is failing to take clear, pristine water from Well No. 17 and transport the water in an enclosed conduit. Its failure to do so creates excessive operating expenses to be incurred to aerate, to pump and to treat the water.
- MPU has failed to obtain a legally enforceable, long-term right to the water from Well No. 17. MPU only has an interim order of the Commission on Water Resource Management, issued subsequent to the Supreme Court's determination that MPU's allocation of water from Well No. 17 was legally improper.
- MPU has failed to economize. It is so dependent on fuel and power that those two cost items -- alone -- in 2008 nearly equaled total revenues in 2008. If the system had an enclosed transmission main, the delivery of water would be much less expensive.

- MPU has failed to "come clean" in its original rate justifications. In the verified unaudited financial reports, its plant-in service is listed at the original cost of \$6,627, 267 (Exhibit MPU 2, Schedule 5, p 1 of 2). Later, in its audited financial reports, \$1,680, 419 is shown to be the owned plant-in-service (Exhibit MPU 2, Schedule 4, p 3 of 10). Consequences of untrue statements made under oath necessarily flow upward from MPU through its sole owner Kaluakoi Water, LLC and its sole owner Molokai Properties, Ltd. to its sole owner GUOCO LEISURE.
- MPU has failed to adhere a basic utility axiom: rate relief must be the last resort. A member of West Molokai Association – Bob Marusich – rolled up his sleeves, sharpened his pencil, and demonstrates how this rate increase can and should be deferred.
- MPU's owner has failed to put in place a responsible management team, opting instead, to land bank all of its Molokai-based assets. Mr. Nichols is the sole officer and director of three utilities – as just part of his job. Well-run utilities require a high level of maintenance, prudent capital improvements, and the introduction of new technologies – none of which are occurring at MPU.
- Most basic, MPU fails to deliver the water it pumps. MPU seeks rate relief to pump 212 million gallons of water, but MPU delivers only 138 million gallons to customers. More than 30% of the water originally pumped at Well No. 17 is lost to excessive leakage, avoidable treatment, and MIS's retention. West End residents are asked to pay approximately \$125,000 for water never delivered.

The Association contends MPU is a failed utility. The standard to apply is prudence. Take an objective look: investment has been imprudent. Contractual arrangements have been imprudent. Corporate structural arrangements have been imprudent. Licensing, purchasing, regulatory affairs – all imprudent. It's a failure.

The Commission needs a receiver who has the time and the know-how to do some short-term improvisations and to commence implementing a long-term plan for a permanent fix. Because these two objectives are beyond MPU's reach, the Commission has the task – due to MPU's defaults.

- THE STATE ALONE IS NOT THE SOLUTION: The State Administration has not even funded what the Attorney General says is an essential first step – an Environmental Assessment – for the Department of Agriculture to enter into a lease with Molokai Properties, Ltd. Such a lease -- together with a permanent water use permit -- would give the Ranch an enforceable legal right to a specified allocation of water from Well No. 17 – something MPU needs but does not have.
- THE COUNTY ALONE IS NOT THE SOLUTION: Since last year, the County of Maui opted to litigate issues – issues which can only be resolved if and when all necessary parties sit at a table, being monitored by a Commission-appointed receiver.

Hawaiian Telcom is not the first Hawaii-based public utility that has been bankrupt. On this Island nearly 30 years ago, Molokai Electric was defacto bankrupt. Formal bankruptcy was averted by informal appointment of a receiver, to workout Molokai Electric's finances, and to remedy prolonged island-wide blackouts. The PUC's appointed receiver could take actions within the context of the pending rate case – because some additional rate relief might be appropriate sometime along the way.

West Molokai Association implores this Commission (a) to make West Molokai Association and all other essential entities parties to the rate proceeding (b) to exercise its powers under Act 74, SLH 2009 and name a receiver, and (c) in concert with the named receiver, to formulate a plan of action that advances the economy, the health and safety of the people, and other public interests at risk in MPU's service area. The Association will participate

Supplement to Oral Testimony of:

Robert B. Marusich

Paniolo Hale Condominiums

100 Lio Place, Unit E-1

Maunaloa, Hawaii 96770

Re:

Public Utilities Commission Docket No. 2009-0048

Representing:

West Molokai Association Board of Directors

PRELIMINARY ANALYSIS OF
MOLOKAI PUBLIC UTILITIES, INC's AMENDED APPLICATION
PUC DOCKET NO. 2009-0048

A. Overstated Expenses in Test Year

1. Diesel Fuel	
- TY Usage Corrections	
Workpaper MPU 10.2, Page 3	\$42,995
- Disallowed Expenses for Lost and	
Unaccounted Water in Excess of 10.0%	<u>40,714</u>
	83,709
2. Electricity	
- Mahana 500 hp pump	
TY Usage Corrections	
Workpaper MPU 10.2, Page 1	42,611
Disallowed Expenses for Lost and	
Unaccounted Water in Excess of 10.0%	29,720
- Pu'u Nana Meter	5,896
- Palaaau Meter	<u>11,840</u>
	90,067
3. Regulatory Expenses	35,000
4. Moana Makani Bulk Water Purchases from WOM	- - -

TOTAL OVERSTATED EXPENSES \$208,776

B. Understated/New Revenue in Test Year

1. Water Availability - Vacant Lots	
(240 lots x \$34.00/month x 12 months)	97,920
2. Fire Hydrants	
(200 x \$10.61/month x 12 months)	25,464
3. Beach Access Facilities - New Meters	
(5 x \$75.00/month x 12 months)	4,500
4. Kualapu'u Bulk Water Sales to WOM -	
Standby Charge (\$1,500/month x 12 months)	18,000

TOTAL UNDERSTATED/NEW REVENUE \$145,884

TOTAL \$354,660

NOTE: Corresponding reduction in MPU monthly water consumption
charge = $\$354,660 / 112,000 \text{ TG} = \$3.17/\text{TG}$

A.1 DIESEL FUEL COSTS

Test year (TY) usage (billing) values used in Workpaper MPU 10.2, Page 3 are inconsistent with TY values used elsewhere throughout the application. Mr. O'Brien's testimony on pages 36 and 37 states that the TY water usage is 26 million gallons for the Kualapu'u bulk sales connection and 112 million gallons for all other customers (Kaluakoi). However, Workpaper MPU 10.2, Page 3 shows Kaluakoi's usage on line 1 as 138 million gallons (i.e., the total of 112 plus 26) and is clearly incorrect. Revised calculations using the exact same rates and factors show 172.231 million gallons delivered to the MIS. Adding the 26 million gallons sold to WOM at the bulk rate results in a production requirement of 198.231 million gallons from Well #17. Proforma fuel cost is then calculated to be \$239,529 or \$42,995 less than the amount indicated in the application.

In Docket No. 2002-0371, the Consumer Advocate took the position that Lost and Unaccounted Water should be limited to 10.0% of the billed usage at Kaluakoi. (See CA-T-1, Page 30 attached.) Diesel fuel costs have been recalculated using this limit, resulting in an allowable fuel expense of \$198,815, or an additional reduction of \$40,714.

1 A. I have included these columns to show the current impact on customers from the
2 rates currently being charged to customers (temporary rates) to the proposed rates.
3 While the percent increase shown in column 9 is calculated based on the present
4 rates pursuant to the Commission's Order issued on April 2, 2009 in this docket, I
5 think it is important to also show the actual current impact on customers using the
6 temporary rates.

7 Q. How were the customer bill and usage levels for the TY determined?

8 A. The customer billing and usage data was summarized by month for the period
9 July 2007 to December 2008 as shown by the data in Exhibit MPU 11.1. This
10 data was used to calculate the number of customers at each meter size and the
11 usage for all MPU customers and also for the water delivered to WOM for its
12 customers through the connection at Kualapuu.

13 Q. Please describe Exhibit MPU 11.1.

14 A. Exhibit MPU 11.1 contains 2 pages summarizing the customer usage for each 6
15 month period ending December 2007, June 2008 and December 2008. The data
16 supporting these summaries is contained in Exhibits MPU 11.2 and 11.3.

17 Q. Did the Company use the customer usage by meter size to project the usage for
18 the TY?

19 A. No, it did not. The Company summarized the customer usage into two categories.
20 First, as shown on lines 4 to 6, which is the meter providing water to WOM at the
21 Kualapuu connection, the Company used the average usage for those three six
22 month periods which resulted in a total of 26,000,000 gallons for the TY as shown

1 on line 4 in column 5. The Company then summarized the usage for the
2 remaining customers and calculated the TY amount in total. This is shown on
3 lines 31 to 33 of page 2.

4 Q. Why did the MPU group all of the remaining usage into one category for the TY
5 usage?

6 A. Effective with the September 1, 2008 temporary rate increase, all of the remaining
7 customers were billed at one rate no matter what meter size was being used by the
8 customer. The Company did not need to maintain records of water use by meter
9 size and therefore grouped all of the customer usage, other than the usage at the
10 Kualapuu connection, into one number.

11 Q. How did you calculate the TY usage for the remaining customers?

12 A. As shown on line 31 of page 2 of MPU Exhibit 11.1, there has been a consistent
13 decline in usage for each 6-month period in both total gallons used (line 31 from
14 95.6 million gallons to 77.4 million gallons to 59.2 million gallons) and in usage
15 per customer per month (line 33 from 78,000 gallons to 46,000 gallons). The
16 Company used the actual usage for the six months ended December 2008,
17 doubled that and reduced it by five percent. $(59,200,000 \text{ gallons} * 2 * 95\% =$
18 $112,000,000 \text{ gallons})$. The Company believes that this estimate is reasonable for
19 the TY for all customers other than the Kualapuu connection.

20 Q. How did you project the number of customers for the TY?

21 A. Lines 37 to 47 show the summary of customer bills for the same 6 month periods
22 by meter size. Since the customer levels have been relatively stable the Company

Fuel Expense (REVISED)

Line #	Description	(1) Factor Or Reference	(2) Amount	(3) Sub-Total (000) gallons	(4) Total
<u>Usage at Kaluakoi</u>					
1	Kaluakoi pro forma test year water usage			138,000	112,000
2	Lost & Unaccounted Water - Based on Billed Water Usage		15.8%	21,804	17,696
3	Percent based on Total Production	9.3%			
4	Water Treatment Water Usage Percent of Customer Usage		22.8%	31,188	25,312
5	Percent based on Total Production	13.3%			
6	Water before Storage and MIS & Kualapuu			190,992	155,008
<u>Change in Storage</u>					
7	Change in Storage Facilities			-	
8	Total before MIS and Kualapuu			190,992	155,008
<u>MIS Retention</u>					
9	MIS Retention at 10% of Water delivered to MIS		11.111%	21,221	17,223
10	Percent based on Water Delivered to MIS	10.0%			
11	Water delivered to MIS			212,213	172,231
<u>Kualapuu Usage</u>					
12	Kualapuu pro forma test year water usage			18,000	26,000
13	Lost & Unaccounted Water - Based on Billed Water Usage		20.00%	3,600	N/A
14	Percent Based on Total Water delivered to Kualapuu	18.7%			
15	Production Requirement from Well 17			233,813	198,231
16	Gallons of fuel ratio to gallons of water produced			33.00%	
17	Gallons of Fuel Required for Test Year Production		65,416		77,158
18	Cost per gallon		3.6162		\$ 3.66182
19	Pro forma Fuel Cost		\$ 239,529		\$ 282,524
20	Fuel Cost per 1,000 gallons sold	L 19 / L 1		\$ 2.0473	

+ 282,524
 - 239,529

 \$ 42,995

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 RSM 6

1 Q. CAN YOU PROVIDE THE CALCULATIONS AND ADJUSTED RESULTS IF
2 THE DATA DURING THAT PERIOD ARE EXCLUDED?

3 A. Yes. As shown on CA-WP-105, if one excludes the data during that period,
4 the resulting factor is 0.3636 gallons of fuel per TG of water pumped, as
5 compared to the unadjusted value of 0.3820 gallons of fuel per TG of water
6 pumped used by MPUI.
7

8 **3. The Volume of Water Pumped Should Be Capped**

9 Q. YOU RECOMMEND A 10% WATER LOSS FACTOR TO DETERMINE THE
10 TEST YEAR WATER VOLUME FOR DETERMINING THE TEST YEAR
11 ELECTRICITY EXPENSE ESTIMATE. IS IT YOUR RECOMMENDATION
12 THAT A SIMILAR FACTOR BE USED WHEN DETERMINING THE TEST
13 YEAR ESTIMATE FOR FUEL OIL EXPENSE?

14 A. Yes. For the same reasons I recommend using a 10% water loss factor for
15 determining the appropriate level for fuel oil expense. Using Ms. Nishi's
16 estimated sales, the proposed 10% water loss factor and the 10% factor
17 related to the use of the MIS, the calculated result is a total volume of 251,991
18 TG to be pumped during the test year. In comparison, without the 10% cap on
19 the unaccounted for/lost water, the test year estimate for fuel oil expense
20 would be based on an estimate of 469,650 TG pumped in 2003.

21 Using the recommended volume of 251,991 TG, the adjusted price and
22 pump efficiency factor, the Consumer Advocate's estimate for fuel oil expense

Fuel Expense (REVISED)

WITH 10.0% CAP ON LOST AND UNACCOUNTED WATER

Line #	Description	Factor Or Reference	Amount	Sub-Total (000) gallons	Total
<u>Usage at Kaluakoi</u>					
1	Kaluakoi pro forma test year water usage		10.0%	138,000	112,000
2	Lost & Unaccounted Water - Based on Billed Water Usage		15.8%	21,804	11,200
3	Percent based on Total Production	<u>8.3%</u>			
4	Water Treatment Water Usage Percent of Customer Usage		22.5%	31,188	
5	Percent based on Total Production	<u>13.3%</u>			
6	Water before Storage and MIS & Kualapuu			190,992	123,200
<u>Change in Storage</u>					
7	Change in Storage Facilities				
8	Total before MIS and Kualapuu			190,992	123,200
<u>MIS Retention</u>					
9	MIS Retention at 10% of Water delivered to MIS		11.111%	21,221	13,690
10	Percent based on Water Delivered to MIS	<u>10.0%</u>			
11	Water delivered to MIS			212,213	136,890
<u>Kualapuu Usage</u>					
12	Kualapuu pro forma test year water usage			18,000	26,000
13	Lost & Unaccounted Water - Based on Billed Water Usage		20.00%	3,600	N/A
14	Percent Based on Total Water delivered to Kualapuu	<u>16.7%</u>			
15	Production Requirement from Well 17			233,813	162,890
16	Gallons of fuel ratio to gallons of water produced			33.00%	
17	Gallons of Fuel Required for Test Year Production		54,297		77,158
18	Cost per gallon		3.66162		\$ 3.66162
19	Pro forma Fuel Cost		\$ 198,815		\$ 282,524
20	Fuel Cost per 1,000 gallons sold	L 19 / L 1		\$ 2.0473	

\$ 282,524

(198,815)

83,709

(42,995)

\$ 40,714

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RAM 8

A.2 ELECTRICITY COSTS

Electricity costs presented in Workpaper MPU 10.2, Page 1 of 5, are substantially overstated.

Mahana Pump Station

Proforma energy consumption of 600,000 kwh is clearly excessive. Workpaper MPU 10.2, Page 2 shows actual electricity consumption for the last six months of 2008 as 244,000 kwh. Applying the same formula that was used to calculate the estimated TY water usage (per p.37 of Mr. O'Brien's testimony), the corresponding proforma electricity usage is calculated at 463,600 kwh ($244,000 \text{ kwh} \times 2 \times 0.95$) and the proforma expense is calculated at \$144,829, a reduction of \$42,611.

Limiting the lost and unaccounted water to 10.0% of the Kaluakoi billings causes a further reduction of allowable electricity expenses. The allowable electricity expense for the Mahana 500 hp pump is calculated by prorating the revised proforma value (463,600 kwh) to the calculated (grossed up) values of water pumped uphill:

$$463,600 \text{ kwh} \times (123,200/155,008) = 368,468 \text{ kwh}$$

The allowable electricity expense for the Mahana 500 hp pump then becomes \$115,009 ($368,468 \text{ kwh} \times \$0.31240/\text{kwh}$), or an additional reduction of \$29,720.

Pu'u Nana Meter

Assuming that the proforma kwh usage shown on Workpaper MPU 10.2, Page 1 is based upon delivering 138 million gallons to Kaluakoi, then the amount should be reduced proportionately ($70,000 \text{ kwh} \times 112/138 = 56,812 \text{ kwh}$) and the revised proforma cost is \$25,402.

Palaau Meter

Purpose unknown. What equipment is served therefrom? Provide justification for 100% allocation of this cost element to MPU ratepayers.

A.3 REGULATORY EXPENSES

Allowable Regulatory Expenses have been estimated at \$20,000/year (\$100,000 amortized over 5 years). This corresponds to a \$35,000 reduction in the TY revenue requirements.

A.4 MOANA MAKANI BULK WATER PURCHASES FROM WOM

WOM provides water to some MPU customers (i.e., Moana Makani parcels and some Papohaku Ranchland lots) under a "temporary" arrangement as described in the record for Docket No. 2002-0371. But the exact physical connections and accounting therefor are still unclear. The parent company has provided "Intercompany Water Sales Reports" in the monthly journal submittals (as per Docket No. 2008-0115), but these only raise broader questions as to the use of and accounting for surface water supplied from the parent company's unregulated "mountain water system".

ELECTRIC CHARGES

Line #	Description	[1] Factor Or Reference	[2] Amount	[3] Sub-Total	[4] Total
<u>Mahana 500 HP pump</u>					
1	Pro Forma kWh usage	463,600	800,000		
2	Total Cost Per kWh	0.31240	\$ 0.31240		
3	Pro Forma Expense	\$ 144,829		\$ 187,440 - 144,829 =	\$ 42,611
<u>Puunana</u>					
4	Pro Forma kWh usage	56,812	70,000		
5	Total Cost Per kWh	0.44712	\$ 0.44712		
6	Pro Forma Expense	\$ 25,402		\$ 31,298 - 25,402 =	\$ 5,896
<u>Palau</u> (PURPOSE / FUNCTION UNKNOWN - NOT APPLICABLE TO MPU)					
7	Pro Forma kWh usage	0	25,000		
8	Total Cost Per kWh	0.47360	\$ 0.47360		
9	Pro Forma Expense	0		\$ 11,840 - 0 =	\$ 11,840
<u>Mahana 200 HP pump</u>					
10	Pro Forma Expense			\$ 489	
11	Total Pro Forma Electric Expense				\$ 231,087
12	Total Pro Forma Electric Expense		\$ 231,087		
13	Total kWh		695,000		
14	Total Cost Per kWh			\$ 0.3325	

	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]	[11]	[12]	[13]	[14]	[15]	[16]	[17]
	Mahana 500 HP pump				Pumama				Palasau				Mahana 200 HP pump		TOTAL		
Description	# of Days	KWH Usage	Total Charge	Charge Per KWH	# of Days	KWH Usage	Total Charge	Charge Per KWH	# of Days	KWH Usage	Total Charge	Charge Per KWH	KWH Usage	Total Charge	KWH Usage	Total Charge	Charge Per KWH
LARGE POWER RATE					PUMAMA-Pole 11 (previously charged to MPL)				PALASAU (previously charged to MPL)								
7/25/08	30	79,200	\$ 19,508	0.246310									\$ 189	79,200	\$ 19,577	0.248450	
8/25/08	30	79,200	19,500	0.246310									189	79,200	19,989	0.248350	
9/25/08	31	79,200	19,467	0.245800									170	79,200	19,837	0.247940	
10/25/08	30	61,800	14,948	0.242830									169	61,800	15,115	0.245370	
11/24/08	30	47,200	11,373	0.240950									169	47,200	11,542	0.244530	
12/26/08	32	62,400	14,085	0.225720									170	62,400	14,255	0.228450	
1/24/07	29	61,800	13,089	0.212480									169	61,800	13,258	0.215230	
2/23/07	30	68,000	14,445	0.212430									169	68,000	14,614	0.214910	
3/24/07	29	65,800	13,981	0.209560									170	65,800	13,951	0.211140	
4/25/07	32	80,800	16,848	0.208510									169	80,800	17,017	0.210610	
5/24/07	29	77,800	16,563	0.213440									169	77,800	16,732	0.215820	
6/25/07	32	68,000	14,757	0.217010									39	68,000	14,795	0.217580	
Total 6-30-07		630,400	\$ 168,262	0.266710									-	\$ 1,900	630,400	\$ 190,182	0.229000
7/25/07	30	37,800	8,785	0.233110									38	37,800	8,803	0.234130	
8/24/07	30	61,800	19,538	0.316140									38	61,800	19,576	0.316900	
9/23/07	32	83,200	20,301	0.244000									38	83,200	20,338	0.244480	
10/25/07	30	82,400	19,481	0.236180									38	82,400	19,499	0.236840	
11/26/07	32	74,400	17,847	0.239880									38	74,400	17,885	0.240390	
12/26/07	30	44,800	11,738	0.261880									38	44,800	11,774	0.262620	
1/23/08	30	49,600	13,702	0.276250									41	49,600	13,743	0.277070	
2/26/08	32	74,400	20,851	0.277580									41	74,400	20,891	0.278110	
3/26/08	29	73,800	20,376	0.276850									41	73,800	20,417	0.277400	
4/24/08	29	60,000	16,950	0.282480									41	60,000	16,990	0.283170	
5/27/08	33	69,200	17,835	0.257730									41	69,200	17,898	0.259810	
6/25/08	29	48,000	15,141	0.315450									41	48,000	15,182	0.316290</	

$$244,000 \text{ kWh} \times 2.0 \times 0.95 = 463,600 \text{ kWh}$$

PUC Doc# 2009-0042
2009-11

1 the actual amount of water to be pumped from the MIS system to serve
2 MPUI's customers, after considering the water loss in the system.

3 As discussed earlier (see section II.B), the Consumer Advocate
4 proposes the Commission limit the water loss factor to 10% when determining
5 certain revenue requirement elements, just as the Commission did in Decision
6 and Order No. 9695; electricity expense is one of those elements.

7 For illustrative purposes and the Commission's convenience, the
8 Consumer Advocate will provide the calculations to show the estimated
9 electricity expense with an unadjusted water loss factor and an adjusted water
10 loss factor shown on CA-WP-104, page 2 and page 1, respectively. It should
11 be made clear, however, that the Consumer Advocate's test year estimate for
12 electricity expense is based on the calculation which limits the water loss
13 factor to 10%, resulting in an estimated 2003 test year electricity expense of
14 \$65,944, as shown on CA-104 and calculated on CA-WP-104.

15
16 E. FUEL OIL.

17 Q. THE COMPANY'S "FUEL AND OIL FOR PUMPING" REPRESENTS THE
18 COST OF FUEL FOR THE WELL 17 DIESEL PUMP. MPUI HAS
19 REPRESENTED THAT THE NORMALIZED LEVEL WILL BE \$167,082.
20 DOES THE CONSUMER ADVOCATE AGREE WITH THIS ESTIMATE?

21 A. No. The Consumer Advocate does not agree with the Company's estimate for
22 reasons similar to that already discussed for MPUI's estimated electricity

Molokai Properties Intercompany Water Sales

Monthly Water Values

Meters		Readings		Use	% Adjust. Factor	Sales in 1,000's	Rate per 1,000	28-Feb	31-Jan
		01/26/09	02/25/09					Value	Value
Mountain Water to Puu Nana Raw Water Res.	New Mtr	93,444,000	85,348,900	1,905,900	100%	1,906	\$2.78	\$5,298.00	\$2,273.00
						615-340-00	WAI-440-06	Waiola to MPU	615 to Waiola
MPU Kaluakoi Project Meter Plus Moana Makani		854,679,400 86,106,500	862,300,400 86,567,100	8,081,600	110%	8,890	\$1.90	\$16,891.00	\$12,887.00
						610-340-00	100-440-05	MPU	610 to MPU
M'loa Puunana 8" Mtr Water Sale (Mloa Proj Mtr)		876,205,000 86,106,500	877,918,000 86,567,100	1,252,400	110%	1,378	\$2.78	\$3,830.00	\$4,150.00
						610-340-00	100-440-03	MPU to Waiola	610 to Waiola
Manawainui Resv. Industrial Park 2" Clearwell Effluent		17,982,000	18,445,400	463,400	110%	510	\$2.78	\$1,417.00	\$1,482.00
						610-340-00	100-440-22	MPU to Waiola	610 to Waiola
Book 9 Industrial Ag	From Cubic Total metered		245,000		110%	270	\$2.78	\$749.00	\$933.00
						615-340-00	100-440-04	Waiola	615 to Waiola

Report #32

Puc Booklet 2009-0041
Ran 13

B.1 WATER AVAILABILITY CHARGES - VACANT LOTS

It appears that owners of vacant lots have not (never?) been billed for water availability charges. Yet their properties continue to benefit from the availability of water. Without it, the vacant land would be worthless. WMA contends that every one of the 321 subdivided lots should be charged the same fixed amount per month--whether the land has been improved or not. This approach is a more just and reasonable allocation of MPU's fixed costs over a broader base, and eliminates the "free ride" the vacant land owners have enjoyed for 30 years or so.

\$408 per year (\$34/month x 12 months) for the availability of water is small change when compared to the value of even the least expensive vacant parcel.

B.2 FIRE HYDRANTS

I personally counted approximately 200 roadside fire hydrants within the MPU service area but they generate no revenue for MPU (at least as far as I can find). Owner of the private road system should be billed at whatever monthly rate is ultimately approved.

B.3 BEACH ACCESS FACILITIES

Are the existing showers and fresh water faucets at the five public access points to the shoreline (from south end of Papohaku to Dixie Maru) metered? I could not find any evidence of a meter or water valve box at each location. If not metered, install new meters. Bill to County of Maui.

B.4 KUALAPU'U BULK WATER SALES TO WOM

1. Water delivery to WOM at Kualapu'u is MPU's largest single account in terms of water quantity (26.0 million gallons per year).
2. Existing bulk rate of \$1.125/TG just barely covers the cost of diesel fuel at Well #17. For the 30 month period from July 2006 through December 2008, average cost of fuel is \$1.097/TG pumped (0.33086 gallons x \$3.31602/gallon).
3. Assuming MPU's latest proposed rate of \$3.3984/TG represents the actual cost of service, then MPU ratepayers have been subsidizing WOM ratepayers by approximately \$60,000 per year since mid 2006, if not longer.
4. Fixed monthly (standby/meter) charges have never been applied to this account. Why is this account treated differently than all others? "Arms length" transaction calculations were not found in on line data base. Were these a part of the 1988 rate case (PUC Docket No. 5471)?
5. Water delivery and consumption (usage) values are expected to remain relatively stable over the next several years. Small declines are the most likely. However, no dramatic increases are anticipated since the golf course and the hotel will remain closed.
6. WMA urges the Commission to determine the actual Cost of Service for all users in the Test Year and, by extension, for the next several years. This is especially true regarding the allocation of fixed cost elements to all parties who benefit from the use/availabilities of water. For example, recovering the fixed MIS rental charge of \$144,456 solely by retail water consumption charges increases the retail cost by \$1.2898/TG.

MOLOKAI PUBLIC UTILITIES, INC.

P.O. BOX 259 • Maunaloa, Hawaii 96770

(808) 680-2883 or 2884

EMERGENCY AFTER HOURS • Call Telephone: 336-0334

SERVICE TO

KUALAPUU

SERVICE	PREVIOUS READING	PRESENT READING	CONSUMPTION	AMOUNT
MIS	76219	78161	1942	2184.75
NEED HELP W/BILL PAYMENT? CALL M.E.O. @ (808) 553-2216 ASK ABOUT THE MONI PROGRAM				
FROM	BOOK	ACCOUNT	FROM	TO
	210	10	06-19-2009	06-23-2009
	DUE DATE		PAY AFTER DUE DATE	
	06-19-2009		2206.60	
			2184.75	

BOOK	ACCOUNT	DUE DATE
210	10	06-19-2009
PAY AFTER DUE DATE		2184.75 DUE
2206.60		2184.75

RETURN THIS STUB WITH PAYMENT

KUALAPUU MOLOKAI RANCH
P.O. BOX 259
MAUNALO A, HI
96770

PUC DOCKET 2009-0048
RBM 15

MPU		\$1.85	\$3.18	\$6.04	\$8.65	\$10.39
1,000 gal. 10		\$18.50	\$31.80	\$60.40	\$86.50	\$103.90
14		\$25.90	\$44.52	\$84.56	\$121.10	\$145.46
18		\$33.30	\$57.24	\$108.72	\$155.70	\$187.02
22		\$40.70	\$69.96	\$132.88	\$190.30	\$228.58
26		\$48.10	\$82.68	\$157.04	\$224.90	\$270.14
30		\$55.50	\$95.40	\$181.20	\$259.50	\$311.70
34		\$62.40	\$108.12	\$205.36	\$294.10	\$353.26
38		\$70.30	\$120.84	\$229.52	\$328.70	\$394.82
42		\$77.70	\$133.56	\$253.68	\$363.30	\$436.38
46		\$85.10	\$146.28	\$277.84	\$397.90	\$477.94

Wai'ola		\$1.85	\$1.85	\$5.15	\$7.76	\$10.69
1,000 gal. 10		\$18.50		\$51.50	\$77.60	\$106.90
14		\$25.90		\$72.10	\$108.64	\$149.66
18		\$33.30		\$92.70	\$139.68	\$192.42
22		\$40.70		\$113.30	\$170.72	\$235.18
26		\$45.10		\$133.90	\$201.76	\$277.94
30		\$52.50		\$154.50	\$232.80	\$320.70
34		\$59.90		\$175.10	\$263.84	\$363.46
38		\$67.30		\$195.70	\$294.88	\$406.22
42		\$74.70		\$216.30	\$325.92	\$448.98
46		\$82.10		\$236.90	\$356.96	\$491.74

CHARMAINE TAVARES
Mayor



JEFFREY K. ENG
Director

ERIC H. YAMASHIGE, P.E., L.S.
Deputy Director

DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
www.mauiwater.org

September 2, 2009

Honorable Carlito P. Caliboso, Chairman
and Commissioners
State of Hawaii
Public Utilities Commission
Department of Budget and Finance
465 S. King Street, #103
Honolulu, HI 96813

FILED
2009 SEP -3 A 9 47
PUBLIC UTILITIES
COMMISSION

Dear Chairman Caliboso and Commissioners:

SUBJECT: TESTIMONY OF JEFFREY K. ENG
Docket Nos. 2009-0048 and 2009-0049 Public Hearings
Applicants: Molokai Public Utilities, Inc. & Waiola O Molokai, Inc.
Thursday, September 3, 2009, Mitchell Pauole Center, Molokai

I am the Director of the Department of Water Supply for the County of Maui. The County is a customer of Molokai Public Utilities, Inc. (MPU) and Waiola O Molokai, Inc. (WOM). Before I comment on the amended applications of MPU and WOM, I would like to express my appreciation to the Commission for requiring both water utilities to re-submit amended applications supported by audited financial statements. As a result of that requirement, both companies submitted amended applications with lower rate requests than in the original applications.

In regard to the applications before you, my concerns over both applications will be combined and are as follows:

- MPU's last permanent general rate approval was in 2003 and WOM's last permanent general rate approval in 1993. If the companies sincerely desire to reduce rate shock to their customers, then why didn't the companies seek rate relief sooner and on a more frequent basis?

"By Water All Things Find Life"

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Honorable Carlito P. Caliboso, Chairman
and Commissioners
State of Hawaii
Public Utilities Commission
September 2, 2009
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- For more than a year, Molokai Properties Limited (MPL), the parent company of MPU and WOM, has caused fear and uncertainty in their customers, as well as to the county at large, over threats to abandon MPU and WOM. MPL has created an environment of mistrust. Therefore, the applications of MPU and WOM should be given greater than normal scrutiny by the Commission.
- The proposed water rates will be much too high for the communities being served, and they would create significant financial hardship for the customers.
- The regulatory expenses appear to be grossly overstated. Each company is seeking to recover \$165,000 in regulatory expenses or \$330,000 in total. The amounts are extraordinarily inflated and are not reasonable for utilities of their sizes. In Kapalua Water Company's recently approved rate increase, its test year legal expenses are only \$17,816.
- The auditor's reports for both utilities reveal MPL water charges in 2008 to each company. The auditor's reports do not provide details of these charges; therefore, these charges should be investigated.
- The auditor's report for WOM reveals a lease agreement between WOM and its parent, MPL, in which WOM is charged \$32,560 plus applicable taxes per month. Again, the auditor's report does not provide any details; therefore, the basis and reasonableness for this lease agreement needs to be investigated.
- In general, the applications and auditor's reports do not provide much detail on intercompany transactions and charges. These need to be thoroughly investigated.
- We do not support the companies' requests that any reductions in test year revenues, expenses or rate base that would affect the ROR should not reduce the companies' revenue requirement until those reductions plus the requested revenue increases exceed an 8.5 percent ROR. These requests are completely unreasonable. The whole purpose of this proceeding is for the Commission to verify the companies' test year revenues, expenses and rate bases for fairness and reasonableness. If any revenues, expenses or rate base items are deemed

Honorable Carlito P. Caliboso, Chairman
and Commissioners
State of Hawaii
Public Utilities Commission
September 2, 2009
Page 3

to be unfair or unreasonable, then they should be disallowed and the revenue requirement revised accordingly.

- The companies' request for a 2.0 percent ROR is reasonable.

Thank you for the opportunity to present this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey K. Eng", written in a cursive style.

JEFFREY K. ENG
Director of Water Supply